



Employers Advocating Economic Opportunity in Idaho®

REVISED BY EPA 4/7/2106 PER EMAIL FROM KEVIN BEATON

February 29, 2016

Regional Freedom of Information Officer
U.S. EPA, Region 10
Office of Ecosystems, Tribal and Public Affairs
1200 • 6th Avenue ETPA-124
Seattle, WA 98101

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

U.S. Environmental Protection Agency
Office of Water (4301T)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Freedom of Information Act Request - Human Health Criteria in Idaho's Water Quality Standards

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, the Idaho Association of Commerce & Industry ("IACI") requests copies of all records, as defined at 40 C.F.R. § 2.100, and any other written materials, maintained by the Environmental Protection Agency ("EPA") pertaining to Idaho's promulgation of human health criteria in Idaho's Water Quality Standards by the Idaho Department of Environmental Quality ("IDEQ"). IACI specifically requests all relevant information produced or possessed by the agency relating to EPA's review and comments to the subject rulemaking. More specifically IACI requests the following records:

1. Any communications between EPA and representatives or members of Idaho Tribes (including the Shoshone-Bannock Tribes, the Nez Perce Tribe, the Coeur d'Alene Tribe, the Kootenai Tribe of Idaho, the Columbia River Inter-Tribal Fish Commission, the Upper Snake River Tribe Foundation) and any other third party from 2011 to the present regarding IDEQ's human health criteria for toxic pollutants that were adopted by the Idaho Board of Environmental Quality in 2015 ("Idaho HHC"), or the development of the Idaho HHC between 2011 to the present.
2. Any communication from 2011 to the present between EPA and representatives or members of Tribes in Washington, Oregon or Idaho regarding the selection of a cancer risk rate and/or a fish consumption rate in the development of HHC in [Deleted "Washington" per email from requestor / Kevin Beaton dated 4/4/16] Idaho.

3. **[Revised per email from requestor / Kevin Beaton dated 4/4/16]** Any e-mails, notes, memoranda, letters or any other documents written, created, produced or received by EPA from 2011 to the present that relate in any way to the issues, that are numbered A to F, in “EPA Comments on Idaho Department of Environmental Quality’s (DEQ) October 7, 2015 Proposed Rule Revisions to Idaho’s Human Health Criteria for Toxics, Docket No. 58-0102-1201, November 6, 2015”. Please do not include documents submitted by EPA to IDEQ as part of the negotiated rulemaking process.
4. Any documents relied upon or reviewed by EPA in developing “EPA Comments on Idaho Department of Environmental Quality’s (DEQ) October 7, 2015 Proposed Rule Revisions to Idaho’s Human Health Criteria for Toxics, Docket No. 58-0102-1201, November 6, 2015”.
5. Any documents relied upon or reviewed by EPA with respect to the following comments included in “EPA Comments on Idaho Department of Environmental Quality’s (DEQ) October 7, 2015 Proposed Rule Revisions to Idaho’s Human Health Criteria for Toxics, Docket No. 58-0102-1201, November 6, 2015”:
 - a. Page 6: “Thus, in order to protect the applicable fishing designated uses in areas where such rights apply, as informed by the treaty-reserved right to continue legally protected culturally important subsistence fishing practices, the state must consider the tribal population exercising their reserved fishing rights in Idaho as the target general population for the purposes of deriving criteria that will protect the subsistence fishing use and allow the tribes to harvest and consume fish consistent with their reserved rights.”
 - b. Page 6-7: “The data uses to determine a FCR must reasonably represent tribal subsistence consumers’ practices that reflect consumption unsuppressed by fish availability or concerns about the safety of available fish.”
6. **Deleted #6 and revised #3 (see above) per email from requestor / Kevin Beaton dated 4/4/16**
7. Documents relied upon or reviewed by EPA in developing the following statement in EPA’s proposed Revision of Federal Water Quality Criteria Applicable to Washington, 80 FR 55063 (Monday, September 14, 2015): “The treaties themselves could be interpreted to require a certain level of risk; e.g., a de minimis level of risk that would most reasonably approximate conditions at the time the treaties were signed and the fishing rights were reserved.” 80 FR at 55068.
8. Any documents that relate to or were used in the development of or support the following statement in EPA’s January 2013 “Human Health Ambient Water Quality Criteria and Fish Consumption Rates: Frequently Asked Questions,”: “It is also important to avoid any suppression effect that may occur when a fish consumption rate for a given subpopulation reflects an artificially diminished level of consumption from an appropriate baseline level

of consumption for that subpopulation because of a perception that fish are contaminated with pollutants.”

9. Any documents that relate to or were used in the development of or that support EPA’s policy that States must consider tribal reserved rights, including tribal treaty-reserved fishing rights, when States develop HHC for toxic pollutants. This policy was expressed in EPA’s comment letters to the IDEQ regarding the Idaho HHC dated May 29, 2015, August 21, 2015 and November 6, 2015, and in EPA’s comment letter regarding WA HHC, dated March 23, 2015.
10. **[Revised per email from requestor / Kevin Beaton on 4/4/16]** Any documents that relate to or were used in the development of the January 2013 “Human Health Ambient Water Quality Criteria and Fish Consumption Rates: Frequently Asked Questions”, including without limitation any documents that reflect EPA’s notice to the public and opportunity to comment on the Frequently Asked Question document before it was published by EPA.
11. Any documents that relate to or were used in the development of or that support EPA’s policy, as expressed on page 17 of “EPA Response to Scientific Views from The Public on Draft Updated National Recommended Water Quality Criteria for the Protection of Human Health” that in determining fish consumption rates for the development of HHC nearshore species should be included, including without limitation, any documents that explain why EPA includes nearshore fish, and what constitutes nearshore.
12. Any documents relating to the analysis conducted by Frank Gobas as described on page 5 of “EPA Comments on Idaho Department of Environmental Quality’s (DEQ) October 7, 2015 Proposed Rule Revisions to Idaho’s Human Health Criteria for Toxics, Docket No. 58-0102-1201, November 6, 2015”, including without limitation, the contract or agreement between EPA and Dr. Gobas, the scope of work or any directions provided by EPA for the work done by Dr. Gobas, any background information provided to Dr. Gobas by EPA relating to the analysis done by Dr. Gobas, any communication between EPA and Dr. Gobas regarding the analysis done by him, any reports or other documents setting forth the results of Dr. Gobas’ analysis, documentation of the amount of money paid or to be paid Dr. Gobas for the analysis he conducted.

By sending this information request to EPA headquarters, IACI intends to obtain any relevant documentation maintained by any EPA office. IACI requests that this documentation be provided as soon as possible. Please notify us of the amount of copying and mailing charges.

Thank you for your assistance.

Sincerely,



Alex LaBeau
President